Supreme Court, U.S.
FILED
OCT 25 2000
CLERK

(2)

No. 00-488

In the Supreme Court of the United States

MUSIC SQUARE CHURCH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a federal court may award declaratory relief against the United States for an alleged violation of 26 U.S.C. 7611(c)(1)(A) by the Internal Revenue Service.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-14a) is reported at 218 F.3d 1367. The order of the United States Court of Federal Claims (Pet. App. 18a-23a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 13, 2000. The petition for a writ of certiorari was filed on September 29, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner Music Square Church was founded by Tony and Susan Alamo. In 1981, petitioner was recognized by the Internal Revenue Service as a tax-exempt organization under 26 U.S.C. 501. On April 5, 1996,

however, the Commissioner of Internal Revenue made a final determination that petitioner was *not* properly organized and operating as an exempt institution. The Commissioner therefore revoked petitioner's tax-exempt status, effective April 3, 1981. The Commissioner gave the following reasons for that determination: (i) petitioner was formed and operated by Tony Alamo for the principal purpose of willfully attempting to defeat or evade federal income tax; (ii) petitioner was so closely operated and controlled by, and for the benefit of, Tony Alamo that it enjoyed no substantive independent existence; and (iii) petitioner failed to operate exclusively for charitable purposes. Pet. App. 2a-3a.

2. Petitioner thereafter filed a petition for declaratory relief in the Court of Federal Claims contending that its tax-exempt status had been improperly revoked. In addition to asserting that petitioner was in fact qualified as a tax-exempt organization under 26 U.S.C. 501(c)(3), petitioner argued that the Commissioner's adverse determination was invalid because the Service had not completed its examination of petitioner's activities within two years of the issuance of the examination notice, as required by 26 U.S.C. 7611(c)(1)(A). The original notice of examination had been issued by the Service on December 20, 1989. The final adverse determination notice was not issued until April 5, 1996. Petitioner contended that the revocation notice was barred by 26 U.S.C. 7611(c)(1)(A), which generally specifies that the Service is to "complete any church tax status inquiry or examination (and make a final determination with respect thereto) not later than" two years after the notice of examination is issued. *Ibid.*

The Court of Federal Claims rejected petitioner's contentions. Pet. App. 18a-23a. The court concluded that the failure of the Service to complete its examination within the two-year period specified by Section 7611(c)(1)(A) does not bar the Service's final determination because the statute further provides that, with the exception of specified types of actions that this case does *not* involve, "[n]o suit may be maintained, and no defense may be raised in any proceeding * * * by reason of any noncompliance by the Secretary with the requirements of this section." 26 U.S.C. 7611(e)(2). The court held that petitioner could therefore prevail in this case only by showing that the Commissioner's revocation of petitioner's tax exempt status was erroneous on the merits. Pet. App. 17a, 21a.

Petitioner advanced no arguments challenging the merits of the Commissioner's determination. Instead, on April 9, 1999, the parties filed a stipulation for the entry of judgment in favor of the United States, reserving for petitioner the right to appeal. Pet. App. 15a.

3. The court of appeals affirmed. Pet. App. 2a-14a. The court noted that Section 7611(e) expressly provides the exclusive remedy under the statute and that, "by the plain language of the statute, a suit may not be maintained, nor may a defense be raised based on the violation by the IRS of subsection 7611(c)(1)." Pet. App. 8a. The court further noted that "the legislative history confirms Congress' intent that there is to be no judicial remedy for the IRS' failure to comply with" the two-year examination period or "any of the [other] requirements in section 7611, aside from the exclusive remedy described in subsection 7611(e)(1)" for particular administrative actions not involved in this case. Pet. App. 9a (citing H.R. Conf. Rep. No. 861, 98th

Cong., 2d Sess. 1113 (1984)). The court emphasized that, in providing in Section 7611(e)(2) that a judicial remedy would not be available for any failure to complete an examination within two years, the legislative history makes clear that "Congress meant what it said." Pet. App. 10a.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. a. Section 7611 of the Internal Revenue Code sets forth specific procedures for the Internal Revenue Service to follow in initiating and conducting tax examinations of churches. Under Section 7611(a), the Secretary of the Treasury may begin a "church tax inquiry" only when "an appropriate high-level Treasury official reasonably believes (on the basis of facts and circumstances recorded in writing)" that the church: (i) may not be exempt, by reason of its status as a church, from tax under 26 U.S.C. 501(a); or (ii) may be carrying on an unrelated trade or business within the meaning of 26 U.S.C. 513. 26 U.S.C. 7611(a)(2). Before beginning a church tax inquiry, the Secretary is to provide written notice of the inquiry to the church. 26 U.S.C. 7611(a)(3). An examination of church records may be begun only after written notice of the examination has been given and the church has been provided with an opportunity for a conference. 26 U.S.C. 7611(b). Section 7611(c)(1), upon which petitioner relies, further provides that "[t]he Secretary shall complete any church tax status inquiry or examination (and make a final determination with respect thereto) not later than the date which is 2

years after the examination notice date." 26 U.S.C. 7611(c)(1)(A).

Upon completion of an examination, the Secretary may determine that the organization does not qualify as a tax-exempt church and is not eligible to receive tax-deductible contributions. The Secretary may also issue a notice of deficiency or assess any resulting underpayment of tax. 26 U.S.C. 7611(d)(1). The Secretary may do so, however, "only if the appropriate regional counsel * * * determines in writing that there has been substantial compliance with the requirements of this section and approves in writing of such revocation, notice of deficiency, or assessment." *Ibid.*

Under Section 7611(e)(1), if there has not been substantial compliance with the notice requirements of subsection (a) or (b), the conference requirement of subsection (b)(3)(A), or the approval requirement of subsection (d)(1), "any proceeding to compel compliance with any summons with respect to such inquiry or examination shall be stayed until the court finds that all practicable steps to correct the noncompliance have been taken." Section 7611(e)(2) then expressly provides that *no other or different relief may be granted* to enforce the provisions of this statute (26 U.S.C. 7611(e)(2)):

> REMEDY TO BE EXCLUSIVE.-No suit may be maintained, and no defense may be raised in any proceeding (other than as provided in [§7611(e)(1)]), by reason of any noncompliance by the Secretary with the requirements of this section.

The courts below correctly concluded that, under the express remedial limitations set forth in Section 7611(e), petitioner was not entitled to relief for any alleged violation of Section 7611(c)(1)(A). With the sole

exception of the remedy of a stay of summons enforcement proceedings provided under Section 7611(e)(1), the plain language of the statute bars *any* other remedy "by reason of any noncompliance * * * with the requirements of this section." 26 U.S.C. 7611(e)(2). When, as here, the language of the statute is clear, "the sole function of the courts is to enforce it according to its terms." *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917)).

b. Petitioner errs in contending (Pet. 10-17) that the only consequence of Section 7611(e)(2) is to make the remedy provided in subsection (e)(1) the exclusive remedy for violations of the specific requirements listed in that subsection. The plain language of the statute refutes that contention. Section 7611(e)(2) expressly states that the remedy provided in subsection (e)(1) is the sole remedy for "any noncompliance * * * with the requirements of this section [Section 7611]." 26 U.S.C. 7611(e)(2). Moreover, subsection (e)(1) does not itself impose requirements for church examinations. The requirements for such examinations are set forth in subsections 7611(a), (b), (c) and (d). Since Section 7611(e)(1) provides the exclusive remedy for "*any* noncompliance" by the Service with the requirements for church audits set forth in Section 7611 (26 U.S.C. 7611(e)(2) (emphasis added), and since the relief sought by petitioner in this case is not authorized by Section 7611(e)(1), the requested relief is expressly barred by Section 7611(e)(2).

c. The court of appeals correctly concluded that the history of the statute supports this straightforward reading of the plain language of its text. As the court succinctly stated, petitioner's argument is "undone by the legislative history of subsection 7611(e)." Pet. App.

9a. The House Conference Report states that, under the statute, "the exclusive remedy for *any* IRS violation of the church audit procedures" is the remedy provided in Section 7611(e)(1). H.R. Conf. Rep. No. 861, *supra*, at 1113 (emphasis added). Indeed, the Conference Report specifically addresses and repudiates the very contention raised by petitioner in this case. The Report states that (*id.* at 1114) (emphasis added):

> [a]side from the exclusive remedy [provided by Section 7611(e)(1)], there is to be no judicial remedy for IRS violation of any of the church examination procedures provided by the conference agreement. *IRS failure to comply with any of these requirements may not be raised as a defense or an affirmative ground for relief in any judicial proceeding including, but not limited to, * * * a declaratory judgment involving a determination of tax-exempt status* (sec. 7428).

As the court of appeals correctly concluded, "[t]his legislative history confirms that Congress meant what it said" in providing that the remedy provided in Section 7611(e)(1) is the exclusive remedy for any violation of any provision of Section 7611. Pet. App. 10a.

2. Petitioner errs in contending (Pet. 18-27) that the decision in this case is irreconcilable in "its approach" to the decision of the Ninth Circuit in *United States* v. *Church of Scientology Western United States*, 973 F.2d 715 (1992), and the decision of the First Circuit in *United States* v. *Church of Scientology of Boston, Inc.*, 933 F.2d 1074 (1991). Neither of those decisions considered or addressed the question presented in this case. In both of those cases, the courts instead dealt with the burden that the Internal Revenue Service

must meet to obtain an order enforcing a summons for documents in a church examination. Those courts held that the Service must show that the documents sought were "necessary" for the examination (as provided in Section 7611(b)(1)(A) and (B)) rather than merely showing that the documents are "relevant" for the examination (which is the standard that generally applies in summons enforcement proceedings under *United States* v. *Powell*, 379 U.S. 48 (1964)).

Petitioner mistakenly argues that those courts awarded relief for the violation by the Service of a "requirement" contained in Section 7611(b)(1) and (contrary to the decision in this case) thereby conferred a remedy that is not authorized in Section 7611(e)(1). Petitioner claims that the "approach" of those decisions is therefore inconsistent with the decision in this case. Pet. 21. The court of appeals correctly rejected that contention. Pet. App. 12a. As the court stated, "[i]n these summons enforcement cases, violation of a procedural requirement of section 7611 was not asserted as a defense, nor as a basis for a declaratory judgment action." *Ibid.* The conclusion reached on the different question presented in those cases thus does not conflict with the decision in this case, for "the proper interpretation of subsection 7611(e)(2) was not directly, or implicitly, before the court in either of these cases." *Ibid.*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 2000